

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

V.

THOMAS MAHONEY,

Defendant.

NO. CR18-090 JCC

**GOVERNMENT'S RESPONSE TO
DEFENDANT'S RESTITUTION
MEMORANDUM**

FILED UNDER SEAL

I. MOTION FOR RESTITUTION

The United States of America, by and through Brian T. Moran, United States Attorney for the Western District of Washington, and Cecelia Gregson, Special Assistant United States Attorney, hereby moves the Court for an order of restitution pursuant to 18 U.S.C. § 3664, in the amount of \$72,503.39 for the minor victim. Defendant Thomas Mahoney pled guilty to three counts of Travel with Intent to Engage in a Sexual Act with a Minor in violation of 18 U.S.C. § 2434(b) and one count of Enticement of a Minor in violation of U.S.C. § 2422(b), and § 2427. Pursuant to the terms of the Judgment and Sentence, the government was granted permission to present a restitution request following sentencing to allow the victim's family an opportunity to prepare adequate documentation in support of a restitution request. Dkt. 40. In support of the Motion for Restitution, the government filed the following documents under seal:

1. Mahoney Restitution Letter (Ex. 1 pages 2-5);
 2. Mahoney Restitution Partial Medical Bills (Ex. 2 pages 7-40); and

1 3. Mahoney Restitution Excel Spread Sheet (Ex. 3 pages 42-43).

2 Dkts. 42, 44. On February 27, 2019, the defendant filed a *Response to Restitution*
 3 *Motion* agreeing to restitution for limited historical counseling sessions totaling \$3,285. Dkt.
 4 46. A hearing has been set for March 5, 2019, at 9:00 a.m. For the reasons set forth below,
 5 the government respectfully request the Court order restitution in the amount sought by the
 6 victim's mother totaling \$72,503.39.

7 II. FACTUAL BACKGROUND

8 On October 30, 2017, the Contra Costa County District Attorney's Office received a
 9 CyberTip from the National Center for Missing and Exploited Children advising of several
 10 sexually explicit messages and images exchanged between Thomas Mahoney, a 24 year-old,
 11 and a 15 year-old female victim via Facebook. Among the 99 files exchanged between the
 12 defendant and the victim were sexually explicit communications, nude and partially nude
 13 images of the victim, images of the victim masturbating, and images of the victim and Mr.
 14 Mahoney engaged in sexual intercourse.

15 In or before 2016, when the victim was approximately 13 years old, Mr. Mahoney
 16 sent her a "friend request" via Facebook, and they started communicating electronically, and
 17 then meeting in person, shortly thereafter. In July 2016, a week after her fourteenth birthday,
 18 the minor victim had sexual intercourse with Mr. Mahoney at his Bellevue, Washington,
 19 residence. From that day until October 31, 2017, Mr. Mahoney repeatedly met with the
 20 victim to engage in sexual intercourse and to create sexually explicit videos and images. For
 21 example, on March 25, 2017, Mr. Mahoney enticed the victim into engaging in sexual
 22 intercourse so he could create visual images/videos of the sexually explicit conduct using his
 23 cellular phone and laptop computer. On another occasion, the victim spent three days at Mr.
 24 Mahoney's residence. According to the victim, Mr. Mahoney supplied her with alcohol
 25 during that time and they engaged in sexual and oral intercourse each of the three days.

26 After the victim moved to California with her family in September 2016, she and Mr.
 27 Mahoney continued to communicate. On three occasions, specifically November 29, 2016,
 28 May 15, 2017, and August 31, 2017, Mr. Mahoney traveled from Washington State to

1 California to engage in illicit sexual conduct, including vaginal and oral intercourse, with the
 2 victim who was 14 and 15 years old during that time. According to the victim, during the
 3 August 2017 trip, Mr. Mahoney told her he wanted to smoke marijuana with her and video
 4 recorded them engaging in sexual activity. Mr. Mahoney provided the victim with marijuana,
 5 which she had never before consumed, and he produced videos of them engaged in sexual
 6 intercourse. Complaint at 11-12 (Dkt. 1). One particular video recovered from the
 7 defendant's cellular phone shows Mr. Mahoney engaged in sexual intercourse with the
 8 victim, who was 14 years of age at the time. PSR at 4.

9 During a return trip to Seattle with her mother in October 2016, the victim met with
 10 Mr. Mahoney and they drove back to his residence to engage in sexual intercourse.
 11 According to the victim, Mr. Mahoney called her his "sex slave," was mean to her, and did
 12 not act like he cared about her. Complaint at 6 (Dkt. 1). When she got back home from her
 13 trip to Seattle, she discovered she was pregnant and told the defendant. Mr. Mahoney told
 14 her keep it a secret and tell nobody. Mr. Mahoney then traveled to California in December
 15 2017, where he rented a hotel room for himself and the victim to have sexual intercourse. He
 16 told the victim to schedule the abortion for the last day of his trip so he could have sex with
 17 her on the days prior. When he dropped her off at the abortion clinic, he handed her \$7 for
 18 pain medications before making his way out of town. Complaint at 7 (Dkt. 1), PSR at 4.

19 On September 17, 2018, Mr. Mahoney pleaded guilty to a Superseding Information to
 20 the charges of Travel with Intent to Engage in a Sexual Act with a Minor as charged in
 21 Counts 1 through 3 in violation of Title 18 United States Code Section 2423(b), and
 22 Enticement of a Minor as charged in Count 4 in violation of Title 18 United States Code
 23 Sections 2422(b), 2427. Dkt. 25. The defendant was sentenced to serve ten years in federal
 24 prison and is subject to ten years of supervision following release pursuant to the terms of the
 25 sentence. Dkt. 40.

26 III. LEGAL AUTHORITY

27 "Restitution orders are specifically authorized by the Victim and Witness Protection
 28 Act of 1982 ("VWPA"), Pub.L. No. 97-291, 96 Stat. 1248-1258 (codified in part at

1 U.S.C. §§ 3663-3664 (1988 & Supp.1991)).” *United States v. Mills*, 991 F.2d 609, 611 (9th
 2 Cir. 1993). The VWPA was enacted “to ensure that the Federal Government does all that is
 3 possible within limits of available resources to assist victims and witnesses of crime without
 4 infringing on the constitutional rights of the defendant.” Pub.L. No. 97-291, 96 Stat. 1249.
 5 *Id.* As such, the VWPA authorizes a sentencing court to order a defendant to make
 6 restitution to his or her victim. *Id.*

7 Under 18 U.S.C. § 3663(a)(1), the district court has the authority to issue a restitution
 8 order. Section 3664 provides that in determining whether to order restitution and the amount
 9 of restitution, the court shall consider the amount of the loss sustained by any victim as a
 10 result of the offense, the financial resources of the defendant, the financial needs and earning
 11 ability of the defendant and the defendant's dependents, and such other factors as the court
 12 deems appropriate. 18 U.S.C. § 3664(d)(3), (e), (f)(1)(A).

13 The United States submits that the requested restitution in this case is permitted
 14 pursuant to 18 U.S.C. § 3663(a)(1)(A), which provides that the district court may order that a
 15 defendant make restitution to “any victim” of the defendant's offense provided the
 16 government establish the offenses “directly and proximately” caused a victim a loss that
 17 restitution can compensate. 18 U.S.C. § 3663(a)(1),(2). *See Hughey v. United States*, 495
 18 U.S. 411, 413, 110 S.Ct. 1979, 109 L.Ed.2d 408 (1990); *see also United States v. Koenig*,
 19 952 F.2d 267, 275 (9th Cir.1991) (restitution is limited to those losses “directly resulting”
 20 from the defendant's criminal conduct). In cases where the district courts have denied victims
 21 restitution, the courts concluded the losses incurred were not a direct result of the
 22 defendant's actions due to “unrelated, intervening cause, or the criminal conduct to which
 23 the defendant plead guilty did not cause the loss.” *See United States v. Gamma Tech
 24 Industries, Inc.*, 264 F.3d 917, 927-928 (9th Cir. 2001).¹

25 _____
 26 ¹ See, e.g., *United States v. Meksian*, 170 F.3d 1260, 1263 (9th Cir.1999) (rejecting mere “but for” standard for proving
 27 loss and reversing restitution order in fraudulent loan application case because an intervening cause for the erroneous
 28 issuance of the loan, an inaccurate environmental report, was not directly related to the offense conduct); *United States v. Sablan*, 92 F.3d 865, 870 (9th Cir.1996) (reversing restitution order based on consequential damages, such as expenses
 arising from meetings with law enforcement officers investigating the crime, because such expenses were not necessary

1 As such, the court has found that “the causal chain may not extend so far, in terms of
 2 the facts or the time span, as to become unreasonable” and the conduct underlying the
 3 conviction offense must have “caused a loss for which a court may order restitution, but the
 4 loss cannot be too far removed from that conduct.” *Gamma Tech Industries, Inc.*, 265 F.3d
 5 at 927-28, *see also United States v. Vaknin*, 112 F.3d 579, 590 (1st Cir.1997) (“[T]he
 6 government must show not only that a particular loss would not have occurred but for the
 7 conduct underlying the offense of conviction, but also that the causal nexus between the
 8 conduct and the loss is not too attenuated (either factually or temporally).”).

9 The government must provide enough evidence to allow the Court to estimate the
 10 “full amount of the victim’s losses” with “some reasonable certainty.” *United States v.*
 11 *Kennedy*, 643 F.3d 1251, 1261 (9th Cir. 2011) (citing *United States v. Doe*, 488 F.3d 1154,
 12 1159-60 (9th Cir. 2007)). Under the Victim and Witness Protection Act, this Court resolves
 13 any dispute as to the proper amount of restitution by the preponderance of the evidence. *See*
 14 18 U.S.C. § 3664(e); *United States v. Waknine*, 543 F.3d 546, 556 (9th Cir. 2008).

15 A district court may rely on the government’s reasonable approximation of loss, and
 16 may accept estimates of loss when precision is not possible. *See United States v. Futrell*,
 17 209 F.3d 1286, 1292 (11th Cir. 2000); *United States v. Jackson*, 155 F.3d 942, 948 (8th Cir.
 18 1998); *see also United States v. White*, No. 15-30172, 2016 WL 4088787 at 1 (9th Cir. Aug.
 19 2, 2016) (“We reject White’s argument that because the victim has not begun treatment, her
 20 projected future medical costs are too speculative to substantiate a restitution award”).

21 The Ninth Circuit directly addressed the issue of restitution ordered for future losses
 22 pursuant to 18 U.S.C. § 2259 in child sexual exploitation cases. *See United States v. Laney*,
 23 189 F.3d 954, 966-967 (9th Cir. 1999) (Ninth Circuit affirmed an award of future counseling
 24 in relation to a sexual exploitation of a child). District courts may order restitution for future

25
 26 to repair damage caused by defendant’s criminal conduct); *United States v. Reed*, 80 F.3d 1419, 1421 (9th Cir.1996)
 27 (reversing restitution order based on damage to private vehicles occurring during flight from police where the offense of
 28 conviction was illegal possession of a firearm by a felon); *United States v. Tyler*, 767 F.2d 1350, 1351 (9th Cir.1985)
 (rejecting restitution award under then 18 U.S.C. § 3651 because losses based on depressed market prices were “too
 remote”).

1 counseling costs of sexual abuse victims and their families even though the costs of
 2 counseling have not yet been incurred. *Id.* In *Laney*, the Ninth Circuit upheld an award of
 3 six years of counseling for the child victim and her family at an estimated cost of
 4 \$60,000.00. *Id.* In *Doe*, the Ninth Circuit also mentioned that the Seventh Circuit had
 5 upheld an award of \$304,200 for *lifetime* counseling sessions. 488 F.3d at 11661; *citing*
 6 *United States v. Danser*, 270 F.3d 451, 455-456 (7th Cir. 2001).

7 Trial courts have broad discretion in order restitution. The requested award here is
 8 warranted in light of the underlying offense conduct, the age of the victim, and the
 9 anticipated long-term counseling needs. The victim's mother incurred property damage and
 10 medical costs related to the physical and psychological manifestations the victim suffered as
 11 a direct result of the defendant's repeated sexual abuse and exploitation, to include
 12 termination of a pregnancy at age fourteen. Medical and psychological treatment were
 13 undoubtedly a reasonably foreseeable response to the Defendant's offense conduct. The
 14 temporal and causal connection in this case between the discovery of Defendant's sexual
 15 abuse of MV1 (October 30, 2017) and the subsequent medical and mental health care
 16 required to date (October 31, 2017 through December 25, 2018) as plainly captured and
 17 documented in the victim's mother concise and organized restitution materials previously
 18 filed, are direct, readily apparent, and reasonable. *See* Dkt. 44.

19 The medical and counseling costs incurred by the victim are contemplated the
 20 language of the statute and supported by reliable evidence of loss. The victim's mother has
 21 provided receipts, documentation, and emails in addition to both the victim and her mothers'
 22 statements to the Court at sentencing. *See* Dkt. 44.² The victim's mother's statement at
 23 sentencing coupled with the letter detailing the expenses incurred due to the lasting effects of
 24 the Defendant's crimes undeniably establish the victim suffered severely as a *direct result* of
 25 the Defendant's conduct. Dkt. 44 at 2-4, 28-33.

26
 27
 28 ² A transcript of the victim and her mothers' statements at sentencing has been ordered and shall be provided upon
 receipt.

1 The victim's therapist provided documentation which supports this restitution request
 2 demonstrating the victim's need for future treatment as she grows into a young woman, "[a]s
 3 [the victim] is young, when she approaches and participates in each developmental state of
 4 her life, new thoughts and memories will emerge." Dkt. 44 at 12. Based upon the victim's
 5 age and counseling needs, the therapist estimated the victim will need forty five sessions of
 6 therapy per year for a period of three to four years at the rate of \$170.00 per session with a
 7 total anticipated cost of \$30,600.00. *Id.* See *United States v. Crandon*, 173 F.3d 122, 126
 8 (3d Cir. 1999) (defendant required to pay victim's restitution even though victim may have
 9 suffered pre-existing, untreated psychological problems prior to her relationship with the
 10 defendant) cited by *Doe*, 488 F.3d 1161-62 (9th Cir. 2007) ("perfectly reasonable for the
 11 District Court to conclude that the additional strain or trauma stemming from [Doe's] actions
 12 was a substantial factor in causing the ultimate loss.").

13 The Ninth Circuit has affirmed that the causation determination – as it relates to
 14 restitution in the child exploitation context — is not a standard that should even approach
 15 mathematical precision. *United States v. Doe*, 488 F.3d 1154, 1159- 1160 (9th Cir. 2007).
 16 Instead, a simple rule of reasonableness is applied. *Id.* at 1160. On appeal, the restitution
 17 award is reviewed under the abuse of discretion standard and will be upheld "if the
 18 district court was able to estimate, based upon facts in the record, the amount of the victim's
 19 loss with some reasonable certainty." *Id.* at 1160-1161. In *Doe* the Ninth Circuit affirmed an
 20 award of restitution that included: two years' worth of psychological treatment for each child
 21 victim; testing for sexually transmitted diseases; costs for alternative education programs and
 22 vocational training for the victims; and a management fee to a case worker at the World
 23 Vision Foundation. *Id.* at 1161-1162.

24 Returning to the instant case, the victim's medical and psychological injuries and
 25 emotional outbursts resulting in property damage are inextricably a direct result of the harms
 26 inflicted by the Defendant. The evidence provided indicates that the victim began
 27 psychological counseling and needed medical care related suicidal ideation and post-

1 traumatic stress disorder after she suffered the harms inflicted by the Defendant and *because*
2 of the harms inflicted by Defendant. *See* Dkt. 44, Ex. 2, at 2-4.

3 As to the \$5,000.00 “borrowed” by the Defendant during the sexually exploitive and
4 abusive relationship with the victim, there is no doubt the defendant should be ordered to
5 repay the “loan.” *See* Dkt. 44, Ex. 2 at 34-40, *victim sentencing statement*.³

6 The United States has provided the Court with sufficient evidence to calculate the
7 incurred restitution in this case with reasonable certainty. It has also provided the Court with
8 sufficient evidence to calculate a reasonable approximately of losses incurred by medical
9 bills and treatment historically and as to future therapy needs. Pursuant to § 3664(f)(1)(A),
10 the Court should order full restitution for medical and mental health treatment costs incurred
11 by the victim’s mother as a result of the Defendant’s longstanding sexual abuse of the victim,
12 without regard to Defendant’s economic circumstances.

13 IV. CONCLUSION

14 For the forgoing reasons, the government respectfully recommends that the Court
15 impose restitution in the amount of \$72,503.39 pursuant to 18 U.S.C. § 3664 as requested by
16 the minor victim’s mother and supported by the exhibits referenced herein.

17 DATED this 1st day of March 2019.

18 Respectfully submitted,

19 BRIAN T. MORAN
20 United States Attorney

21 s/ Cecelia Y. Gregson
22 CECELIA Y. GREGSON
23 Special Assistant United States Attorney
24 Western District of Washington
25 700 Stewart Street, Suite 5220
26 Seattle, Washington 98101-1271
27 Telephone: (206) 553-7970
28 Email: cecelia.gregson@usdoj.gov

³ A transcript of the victim and her mothers’ statements at sentencing has been ordered and shall be provided upon receipt.

1 CERTIFICATE OF SERVICE
2

3 I hereby certify that on March 1, 2019, I electronically filed the foregoing with the
4 Clerk of the Court using the CM/ECF system, which will send notification of such filing to
the attorney(s) of record for the defendant.

5
6 *s/ Emily A. Miller* _____
7 EMILY A. MILLER
8 Legal Assistant
9 United States Attorney's Office
10 700 Stewart Street, Suite 5220
11 Seattle, Washington 98101-1271
Phone: (206) 553-2267
FAX: (206) 553-0755
E-mail: emily.miller@usdoj.gov
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28